IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 144 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

GUJARAT STATE FERTILIZER CO. LTD.

Appearance:
MR AQUIL QURESHI for MR MANISH R BHATT for Petitioner
MR JP SHAH for Respondent

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE D.A.MEHTA

Date of decision: 13/03/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE B.C.PATEL)

Income-tax Appellate Tribunal, Ahmedabad Bench `C' in

Reference Application no. 506/Ahd./83 for assessment year 1976-77 has referred the following question for opinion of this Court at the instance of the Revenue.

"Whether on the facts and under the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the assessee was entitled to initial depreciation and investment allowance on the expenditure of Rs. 12,10,000/being increased liability due to fluctuations in the rates of currency?"

After hearing the learned counsel appearing for the parties and after going through the record, it appears that the latter part of the question actually pertains to development rebate and not investment allowance and therefore, the question is required to be reframed and words ` investment allowance' shall be replaced by `development rebate'. After going through the matter, Mr. Shah, learned counsel for the respondent fairly conceded that the matter pertains to development rebate and not investment allowance and the Tribunal has wrongly decided the same and therefore, in that behalf, answer be given in favour of the Revenue and against the assessee. So far as the initial depreciation is concerned, it is fairly conceded by Mr. Qureshi, learned counsel appearing for the Revenue that the assessee is entitled for initial depreciation and therefore, the Tribunal was right in coming to a conclusion that the assessee was entitled to the initial depreciation. We therefore answer in affirmative and in favour of the assessee. In so far as the depreciation is concerned, we answer accordingly.

[B.C. PATEL, J.] [D.A. MEHTA]

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